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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ESCANDARI LAW FIRM, INC., Plaintiff and Appellant, v. CANON SOLUTIONS AMERICA, INC., Defendant and Respondent.	B291824 (Los Angeles County Super. Ct. No. SC122452)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

L.A. Trial Lawyers Inc., Dmitriy Aristov and Alexander H. Escandari; Matthew J. Kita, for Plaintiff and Appellant.

Dorsey & Whitney, Kent J. Schmidt and Lynnda A. McGlinn, for Defendant and Respondent.

Plaintiff Escandari Law Firm, Inc. (plaintiff) sued defendant Canon Solutions America, Inc. (defendant) asserting, as relevant to this appeal, breach of contract and breach of implied warranty claims in connection with the lease of a copying machine. The trial court, after excluding certain of plaintiff's evidence, granted summary judgment for defendant. Plaintiff asks us to decide on the record presented—which does not include a reporter's transcript of the summary judgment hearing—whether the trial court's evidentiary rulings excluding certain statements in the declaration of plaintiff's principal were error.

I. BACKGROUND

According to plaintiff's first amended complaint (the operative pleading), plaintiff entered into a written agreement for the lease of a model ADVC9075 Canon copier with an option to buy the machine. Plaintiff did not attach a copy of the lease agreement to its complaint; instead, it summarized the agreement's terms as follows: "Plaintiff was to make 60 monthly payments of $718.00 per month and had the option of purchasing the machine at the end of the 60-month period for its fair market value." The complaint alleged the copier failed to "function[ ] properly" and "could not be fixed despite the best efforts of repairmen," which led plaintiff to sue for breach of contract and the implied warranties of merchantability and fitness for a particular purpose.[1]

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[1] Plaintiff also sued for fraud and negligent representation. Plaintiff, however, does not challenge the trial court's ruling on those claims.

Defendant moved for summary judgment, chiefly arguing it never entered into the alleged contract with plaintiff, which meant all of plaintiff's claims were meritless. In support of its motion, defendant submitted three key documents from its files. First was an acquisition agreement for the lease of a Canon copier between defendant and a different law firm entity, Escandari & Michon (E&M), albeit one that shared the same address as plaintiff. The acquisition agreement included a limited 90-day warranty and a disclaimer of any other express or implied warranties. Second was a maintenance agreement between defendant and E&M for a Canon model ADVC9705 copier. Third was an undated agreement between plaintiff and Canon Financial for the lease of a model ADVC9705 copier, which obligated plaintiff to pay $638 per month for 60 months. Each document was a printed form bearing the "Canon" name and each was purportedly signed by Alexander Escandari (Escandari), who was identified, respectively, as E&M and plaintiff's president.

Defendant also relied on plaintiff's discovery responses and deposition testimony to support its motion. In its supplemental response to a request for documents propounded by another defendant, plaintiff stated that it "was never provided a copy of the executed lease agreement" and was "therefore . . . unable [to] substantiat[e the] allegations" in its complaint about the terms of the parties' contract. Escandari testified in deposition as plaintiff's "person most knowledgeable" regarding the dispute, and he stated he signed a form agreement to lease a Canon copier but never read the entirety of the contract. Instead, Escandari checked only to make sure the contract contained certain basic information (e.g., "the firm's name," "the proper address," and

"the proper phone number") and that "[i]t was for a period of time."

Plaintiff opposed defendant's summary judgment motion, disputing essentially all of defendant's facts—including whether Escandari's signature on the proffered contracts was authentic. In addition, plaintiff asserted that, at the time it entered into the lease agreement with defendant, it was doing business as E&M.

Among plaintiff's supporting declarations was one executed by Escandari. In Paragraphs 2 and 3 of his declaration, Escandari stated as follows: "2. The contract I signed on behalf of Plaintiff . . . doing business as [E&M] – has not been produced in this matter. To this day, the only time I saw a copy of the contract was on the day I signed it back in 2012. I remember the agreement I signed as having [¶] a. Been typed; not handwritten; [¶] b. No time bar language; [¶] c. No warranty disclaimer; [¶] d. There was only one price listed for the lease of the copier and it was $718.00. [¶] e. An express warranty. [¶] 3. I was in Europe during the first three weeks of April 2012 when the purported 'Lease Agreement' and 'Acquisition Agreement' Defendant has produced were supposedly signed."

Before the summary judgment hearing, defendant filed written objections to many of the statements in Escandari's declaration, including Paragraphs 2 and 3 in their entirety. Defendant argued Paragraph 2 was inadmissible on eight separate grounds, including that it contradicted Escandari's deposition testimony. Defendant objected to Paragraph 3 on several grounds, including that it was irrelevant. Plaintiff filed no written response to defendant's evidentiary objections.

The record before us indicates the trial court held a contested hearing on defendant's motion on March 22, 2018.

However, the record does not include a reporter's transcript of the hearing, a contemporaneous minute order, or an agreed or settled statement of the proceedings.[2] The record includes only a "proposed order and judgment" prepared by defendant after the hearing, which the trial court ultimately signed without making any changes other than to strike the word "proposed."

According to the order and judgment, the trial court granted judgment as a matter of law to defendant on plaintiff's breach of contract and warranty claims on the following ground: "[Plaintiff] has not produced evidence to support its burden of establishing a contractual relationship between itself and [defendant]. . . . There being no lease between the parties as alleged in Paragraph 8 of the First Amended Complaint, an essential element [of the causes of action] cannot be established as a matter of law and therefore fail." In reaching its decision, the trial court sustained defendant's objections to Paragraphs 2 and 3 of Escandari's declaration, but without identifying which specific objections it found valid or the reasons for its decision to sustain the objections.

II. DISCUSSION

The sole challenge plaintiff raises to the summary judgment for defendant is the claim that the trial court erred by sustaining defendant's evidentiary objections to Paragraphs 2

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[2] According to defendant's opening brief, the trial court issued a tentative ruling prior to the hearing, which included rulings on the parties' respective evidentiary objections, and then later adopted its tentative ruling. No such tentative ruling is included in the appellate record.

and 3 of Escandari's declaration.[3] According to plaintiff, if those statements had been admitted into evidence they would have created a disputed issue of material fact and thereby precluded the award of summary judgment.

We need not decide, and in fact cannot decide, whether the excluded statements would have made a difference in the summary judgment ruling because the record is inadequate to permit us to decide the logically prior issue—i.e., whether the trial court's evidentiary rulings were in fact erroneous. Without a record of what transpired at the summary judgment hearing, and plaintiff having filed no written opposition to defendant's evidentiary objections in the trial court (so far as the record reveals), plaintiff has not carried its burden to affirmatively demonstrate error. Indeed, for all we can reliably tell, plaintiff never opposed in the trial court the evidentiary rulings that it now challenges on appeal.[4]

A. Standard of Review

Plaintiff maintains the standard of review for evidentiary rulings made in connection with summary judgment should be de

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[3] Plaintiff also challenges the trial court's ruling on Paragraph 8 of Escandari's declaration. However, the trial court *overruled* defendant's objections, rendering plaintiff's argument moot.

[4] On April 3, 2018, we asked the parties to brief whether plaintiff's failure to designate a reporter's transcript or suitable substitute warrants affirmance based on the inadequacy of the record. Plaintiff's opening brief does not address the issue and defendant's brief addresses it only briefly. Plaintiff elected not to file a reply brief.

novo, relying on *Reid v. Google, Inc.* (2010) 50 Cal.4th 512 (*Reid*). *Reid* did not hold, however, that the de novo standard applies to evidentiary objections on summary judgment motions; rather, the court expressly reserved deciding whether the de novo or the abuse of discretion standard is appropriate. (*Id*. at p. 535).

Most appellate courts have held abuse of discretion is the proper standard of review. (See, e.g., *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 852 ["According to the weight of authority, appellate courts 'review the trial court's evidentiary rulings on summary judgment for abuse of discretion'"]; see generally, Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) ¶ 8.168, pp. 8-146 to 8-147 ["Pursuant to the weight of authority, appellate courts review a trial court's rulings on evidentiary objections in summary judgment proceedings for *abuse of discretion*. [Citations.]"].)

We follow the weight of authority and review the trial court's evidentiary rulings for an abuse of discretion. "Under that standard, there is no abuse of discretion requiring reversal if . . . the trial court's decision . . . falls within the permissible range of options set by the applicable legal criteria. [Citations.]" (*Cahill v. San Diego Gas & Elec. Co*. (2011) 194 Cal.App.4th 939, 957.)

B. Plaintiff's Failure to Include a Reporter's Transcript in the Appellate Record Requires Affirmance

It is an appellant's burden to affirmatively demonstrate error through an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) We presume the trial court's order is correct, and "'[a]ll

intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Ibid.*)

The California Rules of Court require an appellant to provide a reporter's transcript if "an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court . . . ." (Cal. Rules of Court, rule 8.120(b).) Where the standard of review is abuse of discretion, as it is here, a transcript or settled statement is in many cases indispensable. (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483.)

The record here does not include a reporter's transcript or a settled or agreed statement (Cal. Rules of Court, rules 8.134 & 8.137) memorializing what transpired during the hearing on defendant's motion for summary judgment. The record includes only the post-hearing order and judgment prepared by defendant, which does not illuminate either whether plaintiff actually opposed defendant's evidentiary objections (there being no written opposition) or the reasoning underlining the court's rulings on the objections (made on various grounds).

Without an adequate record, there is no basis for a finding the trial court abused its discretion in sustaining one or more of defendant's objections to Paragraphs 2 and 3 of Escandari's declaration. (*Rhule v. WaveFront Technology, Inc.* (2017) 8 Cal.App.5th 1223, 1229, fn. 5 [explaining that when written rulings are "quite succinct," as are the evidentiary rulings here, "a reliable record of what transpired at the hearings is

indispensable" for appellate review].) That conclusion resolves what we have been asked to decide in this appeal.

DISPOSITION

The judgment is affirmed. Defendant Canon Solutions America, Inc. is awarded its costs on appeal.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.